

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
 PUBLIC UTILITIES COMMISSION)
)
 Instituting a Proceeding to Investigate the)
 Issues and Requirements Raised by, and)
 Contained in, Hawaii Revised Statutes)
 Chapter 486H, as Amended)
 _____)

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PUBLIC UTILITIES
COMMISSION

MEMBERS OF THE HAWAII PETROLEUM MARKETERS ASSOCIATION'S

MOTION FOR ADJUSTMENT OF THE
PREMIUM AND MID-GRADE PRICE ADJUSTMENT FACTORS

and

CERTIFICATE OF SERVICE

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OF THE STATE OF HAWAII

PUBLIC UTILITIES COMMISSION

Instituting a Proceeding to Investigate the
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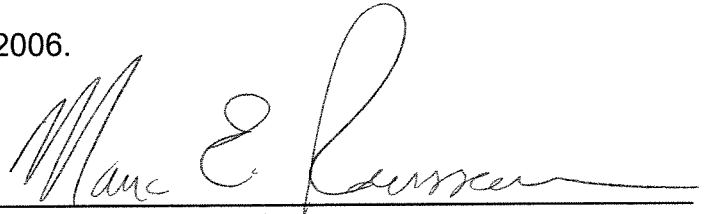
**MOTION FOR ADJUSTMENT OF THE
PREMIUM AND MID-GRADE PRICE ADJUSTMENT FACTORS**

The Hawaii Petroleum Marketers Association (“HPMA”), by and through its attorneys, Cades Schutte LLP, hereby submits on behalf of the signatory members of HPMA hereto, this Motion for Adjustment of the Premium and Mid-Grade Price Adjustment Factors pursuant to Hawaii Revised Statutes (“HRS”) §486H-16 and Hawaii Administrative Rules, Title 6, Chapter 61, Rules of Practice and Procedure Before the Public Utilities Commission (“PUC”)

This motion seeks an adjustment to (i) the mid-grade adjustment factor established at \$.05 per gallon under HRS §486H-13(f), and (ii) the premium adjustment factor established at \$.09 per gallon under HRS §486H-13(g). The mid-grade and premium price adjustment factors should not be static but rather should track actual weekly reported price levels published by the Oil Price Information Service similar to the baseline maximum wholesale price for regular gasoline that fluctuates on a weekly basis.

This Motion is based on the attached memorandum signed by members of the HPMA and the confidential monthly submissions of the industry participants made to the PUC.

DATED: Honolulu, Hawaii, March 22, 2006.

A handwritten signature in black ink, appearing to read "Marc E. Rousseau", written over a horizontal line.

KELLY G. LAPORTE
MARC E. ROUSSEAU
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Attorneys for
HAWAII PETROLEUM MARKETERS ASSOCIATION

MEMORANDUM IN SUPPORT OF THE
MEMBERS OF THE HAWAII PETROLEUM MARKETERS ASSOCIATION'S
MOTION FOR ADJUSTMENT OF THE
PREMIUM AND MID-GRADE PRICE ADJUSTMENT FACTORS

Background.

In adopting the Gas Cap laws for the State of Hawaii, the Legislature set the initial adjustment factors for mid-grade and premium gasoline at \$.05 and \$.09 per gallon, respectively. See HRS §486H-13(f) and (g) (2004). These adjustment factors, among others, allow the maximum pre-tax wholesale price for regular gasoline to be adjusted upward based on a higher grade of gasoline sold in a wholesale transaction (i.e., mid-grade or premium gasoline).

The baseline maximum wholesale price for regular unleaded gasoline is determined by the average of the spot daily price for gasoline in the Los Angeles, New York Harbor and United States Gulf Coast markets. See HRS §486H-13(b). The spot prices for regular unleaded gasoline in these markets are established by the reported and published prices of the Oil Price Information Service (OPIS). Id. OPIS also publishes a premium gasoline price index for these same three markets and a mid-grade price index for the New York Harbor and U.S. Gulf Coast markets, but not Los Angeles. See <http://www.opisnet.com/> and the proprietary OPIS reporting service that the PUC subscribes to in order to set the weekly baseline wholesale price.

At the time Gas Cap laws were enacted, the Legislature recognized that it would be necessary to provide an additional price adjustment for both premium and mid-grade gasoline to allow for their traditionally higher spot prices in the three benchmark marketplaces. OPIS' published reports at this time supported a

\$.05 per gallon differential for mid-grade and a \$.09 per gallon differential for premium to reflect the grade price differences.

In implementing the Gas Cap laws, on August 1, 2005, the PUC issued Decision and Order No. 21952 in Docket No. 05-0002 (the "Order"). The Order, among other things, reviewed the appropriateness of the Gas Caps premium and mid-grade gasoline adjustments. See Order at pp. 25-26. The PUC adopted the Legislature's initial premium and mid-grade adjustment factors of \$.05 cpg and \$.09 cpg respectively, although noting that such statutory set levels were in fact lower than the recommendations of its consultant, ICF, of \$.064 cpg and \$.101 cpg. Id. at n. 62 and p. 39.

Since the implementation of the Gas Cap laws by the PUC pursuant to the Order, the OPIS published reports for regular, premium, and indirectly mid-grade,¹ have fluctuated widely as shown below in the summarizing table.

Month	OPIS Published Prices in Excess of Regular Baseline Gasoline Prices		Statutorily Authorized Price Adjustments		Overage or <Underage> of the Statutory Adjustments and Actual OPIS Index Prices	
	<u>Mid-Grade</u>	<u>Premium</u>	<u>Mid-Grade</u>	<u>Premium</u>	<u>Mid-Grade</u>	<u>Premium</u>
September 2005	9.73 cpg	24.33 cpg	5 cpg	9 cpg	<4.73> cpg	<15.33> cpg
October 2005	6.59 cpg	16.48 cpg	5 cpg	9 cpg	<1.59> cpg	<7.48> cpg
November 2005	4.04 cpg	10.11 cpg	5 cpg	9 cpg	.96 cpg	<1.11> cpg
December 2005	4.09 cpg	10.22 cpg	5 cpg	9 cpg	.91 cpg	<1.22> cpg
January 2006	5.66 cpg	14.14 cpg	5 cpg	9 cpg	<.66> cpg	<5.14> cpg
February 2006	8.03 cpg	20.08 cpg	5 cpg	9 cpg	<3.03 cpg>	<11.08 cpg>

¹ Because OPIS does not publish a mid-grade price index for the Los Angeles market, simply taking the weighted average of mid-grade prices for the New York Harbor and the U.S. Gulf Coast markets would erroneously skew a mid-grade adjustment calculation. Since mid-grade is a 60/40 blend between regular (60%) and premium (40%) gasoline and OPIS publishes regular and premium indexes for all three markets, then a more accurate mid-grade average can be calculated using this 60/40 ratio on the known price indexes of the three core markets.

Source: OPIS' proprietary weekly spot price reports.

Legal Standard.

HRS §486H-16(a)(4) provides that a wholesaler or jobber may petition the Commission to adjust the maximum pre-tax wholesale price of mid-grade or premium gasoline in the event of a change in the value of the mid-grade adjustment factor and the premium adjustment factor. The petitioner bears the burden of proof to establish by clear and convincing evidence the need for and the amount of any adjustment. Id. An adjustment to the mid-grade and premium adjustment factors in effect at the time of the petition is appropriate if there is any "material" change in the published factors by an appropriate information reporting service. Id.

As described above and supported by the proprietary OPIS reports for regular, premium, and indirectly mid-grade (which the PUC has access to), there has been a material change in the differential between the baseline regular gasoline price index and the index for mid-grade and premium gasoline prices. These material changes are not reflective in a static price adjustment factor for mid-grade and premium gasoline. The amount of the differential varies widely but it is consistently well above the level set by the Legislature in HRS §486H-13(f) and (g), as adopted by the PUC in the Order.

Although the Commission apparently found ICF's recommendation for slightly higher mid-grade and premium adjustment factors of 6.4 cpg and 10.1 cpg as not satisfying the "material" requirement, the recently published OPIS numbers support a much higher material change to the adjustment factor.

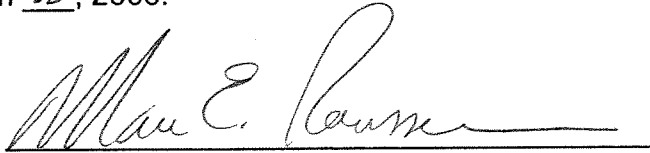
In support of its position that the current mid-grade and premium adjustment factors are insufficient to reflect actual differences between grades of gasoline sold in Hawaii, the confidential monthly wholesaler reports filed by HPMA members and other industry participants should also indicate to the PUC that the current adjustment factors should be increased to reflect actual prices among the three grades of gasoline.

It is also more logical and inherently more fair to have the premium and mid-grade price adjustment factors fluctuate from week to week based on the actual price indexes for these grades as reported by OPIS. In other words, if the baseline maximum wholesale price for regular gasoline fluctuates each week based on actual reported OPIS index results, then the mid-grade and premium price adjustment factors should also fluctuate to represent more accurate market conditions.

Conclusion.


Therefore, HPMA and its sponsoring members hereby request that the PUC replace the mid-grade and premium adjustment factors initially established by HRS §486H-13(f) and (g) and the Order with a method of calculation made on a weekly basis and which reflects the actual OPIS-reported differences between the three grades.

DATED: Honolulu, Hawaii, March 22nd, 2006.



KELLY G. LAPORTE
MARC E. ROUSSEAU
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Attorneys for
HAWAII PETROLEUM MARKETERS ASSOCIATION

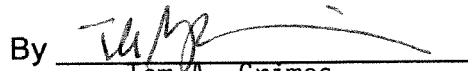
**HAWAII PETROLEUM
MARKETERS ASSOCIATION**

By 
Its Robert W. Fung
President

AKANA PETROLEUM, INC.

By _____
Its

ALOHA PETROLEUM, INC.

By 
Its Tom A. Grimes
Vice President

GARLOW PETROLEUM, INC.

By _____
Its

MID-PAC PETROLEUM, LLC

By _____
Its

SETER PETROLEUM, INC.

By _____
Its

DATED: Honolulu, Hawaii, March 22nd, 2006.

KELLY G. LAPORTE
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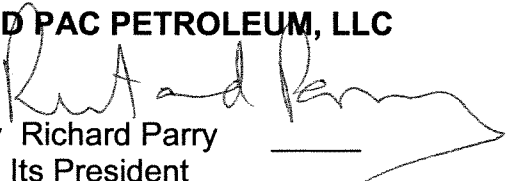
ALOHA PETROLEUM, INC.

By _____
Its

GARLOW PETROLEUM, INC.

By _____
Its

MID PAC PETROLEUM, LLC

By  _____
Richard Parry
Its President

SENER PETROLEUM, INC.

By _____
Its

DATED: Honolulu, Hawaii, March 8th, 2006.

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MARC E. ROUSSEAU
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HAWAII PETROLEUM MARKETERS ASSOCIATION

**HAWAII PETROLEUM
MARKETERS ASSOCIATION**

By _____
Its

AKANA PETROLEUM, INC.

By Richard E. Akana
Its President

ALOHA PETROLEUM, INC.

By _____
Its

GARLOW PETROLEUM, INC.

By _____
Its

MID-PAC PETROLEUM, LLC

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Its

SETER PETROLEUM, INC.

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Its

DATED: Honolulu, Hawaii, March 22nd, 2006.

KELLY G. LAPORTE
MARC E. ROUSSEAU
NEILL T. TSENG
Attorneys for
HAWAII PETROLEUM MARKETERS ASSOCIATION

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By _____
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MID-PAC PETROLEUM, LLC

By _____
Its

AKANA PETROLEUM, INC.

By _____
Its

GARLOW PETROLEUM, INC.

By  _____
Its PRESIDENT

SENER PETROLEUM, INC.

By _____
Its

DATED: Honolulu, Hawaii, March 22, 2006.

KELLY G. LAPORTE
MARC E. ROUSSEAU
NEILL T. TSENG
Attorneys for
HAWAII PETROLEUM MARKETERS ASSOCIATION

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AKANA PETROLEUM, INC.

By _____
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GARLOW PETROLEUM, INC.

By _____
Its

SENER PETROLEUM, INC.

By  _____
Its *V.P.*

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2006, I served copies of the foregoing, together with this Certificate of Service, either by United States mail, postage prepaid, or by hand-delivery to the following:

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DATED: Honolulu, Hawaii, March 22, 2006.

A handwritten signature in black ink, appearing to read "Marc E. Rousseau", is written over a horizontal line.

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